

RULE 117. DEFAULT

Rule 55 shall govern practice regarding defaults and default judgments, except that no default or default judgment shall be entered by the clerk. No default judgment shall be entered in an action for divorce, child support, spousal support, counsel fees, division of marital or non-marital property, paternity, parentage or parental rights and responsibilities, or motions for post-judgment relief, without all parties being given notice and opportunity to appear and be heard before entry of judgment. Notice of hearing is not required prior to entry of a default judgment where the court finds that the party, although properly served with the complaint, petition or motion for post-judgment relief, has not entered an appearance and/or otherwise participated in proceedings before the judgment.

Advisory Notes June 2008

Rule 117 indicates that procedures regarding defaults and default judgments are generally governed by Rule 55. However, Family Division cases do not lend themselves to the clerk entered defaults or default judgments authorized by Rule 55(b)(1). For similar reasons, post-judgment motions under Rule 120 do not lend themselves to a waiver of objections as authorized by Rule 7(c)(3).

The text of Rule 117 also reflects the spirit of Rule 80(f) that parties should have notice of final hearings and the pendency of final judgments in Family Division actions. Thus, the rule requires that no default judgment shall be entered in actions for divorce, child support, spousal support, paternity, parentage or parental rights and responsibilities without all parties being given notice and an opportunity to appear and be heard before entry of judgment. To avoid ambiguity that is often inherent in summons and notices regarding preliminary proceedings in divorce cases where parties who do not contest the ultimate result—the divorce—and thus do not respond indicating such a contest, the summons and notices must be changed to reflect all consequences of not participating in the proceedings.

The proposed rule does allow the court to waive notice to properly served parties who have not entered any appearance and not otherwise participated in the proceedings before the hearing and judgment. The summons must be redrafted to reflect all consequences of a failure to respond or enter an appearance.

RULE 118. FINAL ORDERS OF FAMILY LAW MAGISTRATES; JUDICIAL REVIEW

(a) Objection and Review. Any party who wishes to appeal a Family Law Magistrate's final judgment or order shall file an objection in the District Court within 21 days of the entry of the magistrate's final judgment or order. If no objection is filed, the parties are deemed to have waived their right to object and to appeal, and the magistrate's final judgment or order shall become the judgment of the court and have the same effect as any final judgment signed by a District Court judge.

(1) The objection must specifically state the grounds alleged for rejecting or modifying the judgment or order. If a party fails to comply with these requirements, the objection may be dismissed with prejudice. An objection shall not be dismissed solely because it is erroneously captioned as a "motion," "appeal," "notice of appeal" or some other form of pleading.

(2) When an objection is filed, a judge shall review the record established before the magistrate with or without a hearing and may adopt, modify or reject the order, set the matter for further hearing before a judge or magistrate or recommit the matter to the magistrate with instructions.

(3) A magistrate's final order addressing parental rights and responsibilities, residency, and support of minor children or the separate support or personal liberty of a person is effective when signed and remains in effect until modified or rejected by a judge.

(4) Every written final order of a magistrate shall state the parties' right to object to the magistrate's final order and the consequences if the parties fail to object.

(b) Appeals. An appeal from a judgment entered after objection to a final judgment or order of a magistrate shall be taken in accordance with the Maine Rules of Appellate Procedure. No appeal may be taken from a final judgment or order of a magistrate as to which no timely objection was filed pursuant to subdivision (a).

(c) Waiver of Rights. The parties may waive their right to object and request immediate confirmation of a magistrate's final order. They may also waive their rights to appeal.

**Advisory Notes
June 2008**

Rule 118 incorporates, with only technical amendments, FAM DIV.III.G.2-4 addressing final judgments and orders that may be issued by magistrates and provisions for judicial review and appeal of those final judgments and orders.

RULE 119. REFEREES

The court may appoint a referee in any case where the parties agree that the case may be heard by a referee, pursuant to Rule 53.

**Advisory Notes
June 2008**

Rule 119 of the Family Division Rules differs slightly from Rule 53 of the Maine Rules of Civil Procedure. Appointment of a referee is allowed only by the agreement of the parties. When a referee is appointed, practice is governed by Rule 53.

RULE 120. POST-JUDGMENT RELIEF

(a) Except as otherwise provided in Title 19-A, any proceedings for modification or enforcement of a final judgment in an action under this chapter shall be on a motion for post-judgment relief. The motion shall be served in accordance with Rule 103. A motion made in response to a motion filed by a party represented by an attorney may be served upon the attorney in accordance with Rule 5.

A motion, any response, and any opposing motion or memorandum shall be accompanied, as appropriate, by the child support affidavits if required by Rule 108.

A motion for contempt may also be brought pursuant to Rule 66. After a hearing on a motion for contempt and a finding of contempt, in addition to other relief, a court may determine that an order amending a judgment or order is necessary to achieve the purposes of the judgment or order that is the subject of the motion for contempt.

Post-judgment motions filed in an action under this chapter must be accompanied by a properly completed Summary Sheet, which is available from the clerk.

(b) The court shall hold a hearing on a motion for post-judgment relief, unless the parties certify to the court that there is a stipulated judgment or amendment and no hearing is necessary.

(c) Upon motion of a party made within 5 days after notice of a decision under these rules, or upon the court's own motion, the justice or judge who has entered an order on a motion for post-judgment relief shall make findings of fact and conclusions of law in accordance with Rule 52.

Advisory Notes June 2008

This rule establishes the procedures for filing post-judgment motions seeking to amend or enforce Family Division orders and judgments that have become final by operation of law. The rule incorporates the provisions of Rule 80(k) but with a qualification noting that enforcement of judgments may also be initiated by a contempt motion pursuant to Rule 66. Service is governed by Rule 103. Responses to motions for post-judgment relief are governed by Rule 105. The filing of a memorandum in support of or opposition to a post-judgment motion is not required.

To avoid multiple appearances by the parties, appearances before two judicial officers for the same issue, and filing of multiple motions, a judge who hears a motion for contempt and finds contempt may consider any orders or amendments of orders necessary to achieve the purposes of the underlying judgment or order. *See* Rule 66(d)(3).

RULE 121. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

Unless otherwise ordered by the court, an interlocutory or final judgment in an order addressing parental rights and responsibilities, residency and support of minor children or the separate support or personal liberty of a person shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

Rule 62 shall govern the practice for a stay of a judgment or enforcement of a judgment.

Advisory Notes June 2008

Rule 121 relating to a stay of proceedings to enforce a judgment incorporates Rule 62 by reference.

RULE 122. TRANSFER FROM SUPERIOR COURT TO DISTRICT COURT

Any Family Division action pending in the Superior Court may be transferred to the District Court. Transfer shall be accomplished by filing a notice of transfer agreed to by the parties or their counsel and by paying to the clerk of the Superior Court any required fees. No transfer may be requested during a hearing or while the court has under advisement the merits of the action or any motion after hearing. The action may be transferred to a division of the District Court, located within the county in which either party resided at the commencement of the action. The notice must designate the receiving District Court. After a judgment has become final, the action may be transferred to any division of the District Court. The clerk shall file a copy of the record and all original papers in the action in the District Court in that division. Thereafter the action shall be prosecuted as if all prior proceedings in the action had taken place in the District Court.

Advisory Notes
June 2008

Rule 122 is similar to Rule 80(1). The court unification legislation authorized all actions for divorce and annulment pending in the Superior Court as original actions on or before December 31, 2000, to continue to be adjudicated in the Superior Court. At the same time, the unification legislation called for opportunity to transfer such actions to the District Court. This rule allows actions for divorce and annulment pending as original matters in the Superior Court to be transferred to the District Court for further processing under the Family Division rules. This transfer can only occur by agreement of the parties. Transfers cannot occur while the Superior Court is hearing or has under advisement the merits of any contested matter before it.

RULE 123. APPEALS TO THE LAW COURT

Appeals to the Law Court from orders and judgments entered in accordance with this chapter, in which there is a right of appeal to the Law Court, shall be governed by the Maine Rules of Appellate Procedure.

Parties may waive their right to appeal on a court approved form.

Advisory Notes
June 2008

Rule 123 notes that appeals to the Law Court from orders and judgments entered in accordance with the Family Division rules are governed by the Maine Rules of Appellate Procedure. The rule contains the qualification that appeals to the Law Court are only available where there is a right of appeal to the Law Court. Rule 123 in no way expands the existing rights of appeal. For example, interlocutory or interim orders issued in Family Division actions cannot be appealed, except to the extent that appeal of such orders is specifically authorized by statute, by precedent, or by rule of court.

Rule 123 also recognizes the present practice of allowing waiver of rights of appeal, to render judgments final before expiration of the appeal period.

RULE 124. REMOVAL TO SUPERIOR COURT

When the Maine Constitution or the United States Constitution provides a right to a trial by jury in any action or on any issue in an action brought pursuant to this chapter, that action or issue may be removed to the Superior Court for jury trial. When such a removal is authorized, the removal shall be governed by Rule 76C, provided that once the constitutional action or issue is resolved by verdict of the jury, the matter shall be remanded to the District Court for such further proceedings as are authorized or required by this chapter.

Advisory Notes June 2008

As a result of court unification, the District Court has exclusive jurisdiction of Family Division actions. Cases in categories such as divorce, separate support, and paternity may no longer be removed, as a matter of right, to the Superior Court. The rule does not, however, impose an absolute prohibition on removal. It leaves the possibility of removal, but only in those cases where there may be a right to jury trial of all or a portion of a Family Division action. The rule also provides that once the matter as to which there is a constitutional jury trial right is resolved by verdict of the jury, the matter is to be remanded to the District Court for further proceedings as authorized by these rules. *See Rule 100.*

RULE 125. EFFECTIVE DATE

The rules in Chapter XIII are effective January 1, 2009. They shall govern all proceedings in Family Division actions brought on and after January 1, 2009 and all further proceedings in actions then pending.

Advisory Notes June 2008

Rule 125 makes Chapter XIII effective on January 1, 2009. It indicates that the rules shall govern all proceedings in the Family Division brought on and after January 1, 2009, and also all further proceedings in actions then pending.